

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 30, 2011

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on September 30, 2011. Members present were Chairman Louis Stout, Noel White, James Griggs, Janice Meyer, Thomas Glover, Barry Stumbo and Kathryn Moore (arrived at 1:08 p.m.). Others present were Jim Hume, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Jim Marx, Barbara Rackers and Wanda Howard.
- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the September 9, 2011 special meeting would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (Moore absent) to approve the minutes of the September 9, 2011 special meeting.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
- a. **V-2011-58: JAMES HICKEY** - appeals for a variance to reduce the required side yard from 3' to 9" for retention of a home addition; and a variance to reduce the required rear yard from 10' to 0' for retention of a deck in a Planned Neighborhood Residential (R-3) zone, on property located at 3606 Windgate Way. (Council District 4)

The Staff Recommends: Postponement, for the following reasons:

1. Because the deck encroaches into the adjoining property to the rear, an additional variance for that property is required to reduce the rear yard to zero feet. The appellant has described such a variance in his request; however, there is no indication in the application materials (such as a letter of permission from that property owner) that he has the right to ask for that variance.
2. Notification to property owners within a 200-foot radius around that property must be provided if a variance is requested for that property (356 Big Bear Lane), as well as legal notice in the newspaper. A one-month postponement will allow time to provide the necessary letter of permission from the adjoining property owner, as well as notification letters to surrounding property owners, for the variance request.

Representation – Mr. Richard Murphy, attorney, was present representing the appellant and requested a one-month postponement, in concurrence with the staff's recommendation.

After determining that there were no objectors to this case present, the Chairman called for a motion.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried unanimously to postpone **V-2011-58: JAMES HICKEY** until the October 28 meeting.

Mr. Marx reminded Mr. Murphy that the filing deadline is next week for the additional variance that is needed.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- a. **V-2011-62: DONALD and DEBRA CORN** - appeal for a variance to reduce the required side yard from 8' to 2' for reconstruction of a residence in a Single-Family Residential (R-1C) zone, on property located at 1408 Oak Hill Drive (Council District 1).

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the subject or surrounding properties, as the new home will be located in the same location as the prior single family residence.
2. The relatively narrow width of the lot, and location of the prior residence and associated improvements (driveway and detached garage), are special circumstances that contribute to justifying a side yard reduction.
3. Strict application of the Zoning Ordinance would force the appellants to reduce the width of the new residence to about 22', which would be marginally functional and would greatly limit design options.
4. The appellants are making a reasonable effort to construct a new residence on a small lot, with no evidence of any intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The new residence shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response.

Representation – Mr. Donald Corn, appellant, was present, along with his daughter. He responded, when asked by the Chairman, that he had read and understood the conditions for approval.

For Building Inspection's clarification, Mr. Marx said the appellant indicated that he may have a 3-foot side yard, which would make compliance with the Building Code a lot simpler. (Mr. Hume's response was inaudible.)

Ms. Moore asked whether this should be changed to 3 feet. Mr. Marx said, in order to give the applicant flexibility, to leave it at 2 or 3 feet.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover and carried unanimously to approve **V-2011-62: DONALD and DEBRA CORN** (a variance to reduce the required side yard from 8' to 2' for reconstruction of a residence in a Single-Family Residential [R-1C] zone on property located at 1408 Oak Hill Drive) for the reasons recommended by the staff, and subject to the two conditions recommended by the staff.

- b. **V-2011-63: JENNIFER V. BERRYMAN** - appeals for a variance to reduce the required setback for a free standing identification sign from 20' to 0' in a Planned Neighborhood Residential (R-3) zone, on property located at 3050 Kirklevington Drive. (Council District 4)

The Staff Recommends: Approval, for the following reasons:

1. Granting the variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The required sight triangle can be met if the sign

is located at or near the property line due to the large amount of right-of-way along the right-in/right-out intersection of Kirklevington Drive and Bates Creek Road. Additionally, other signs of similar stature, orientation and location exist along this portion of the Bates Creek Road corridor; thus, no change to the character of the area will be experienced.

2. Granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as the right-of-way in this location has been appropriately sized to allow for traffic visibility; and if situated behind the 20' setback line, it could infringe on other easements or a FEMA Special Flood Hazard Area.
3. The site restrictions of utility poles, easements and the Special Flood Hazard Area associated with Bates Creek along the Bates Creek Road frontage of the property significantly limit the placement of a freestanding sign for the apartment complex located on the property. These significant restrictions constitute a special circumstance that contributes to justifying this request to eliminate the required setback.
4. Strict application of the Zoning Ordinance would limit the ability of the appellants to construct a sign along the Bates Creek Road frontage of the subject property due to the site constraints and prevent the construction of a freestanding sign as permitted in Article 17 of the Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The sign shall be erected in accordance with the submitted application and site plan, with allowances to alter the location, per condition #4.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction of the sign.
3. An encroachment permit shall be obtained from the Department of Public Works prior to construction.
4. The Division of Traffic Engineering shall verify that the proposed sign will not obstruct the sight triangle, as required by Article 3-3 of the Zoning Ordinance. If the sign does obstruct the sight triangle, the location shall be modified accordingly.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Ms. Jennifer Berryman, appellant, was present, along with Mr. Bob Derringer. Ms. Berryman indicated that she had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously to approve **V-2011-63: JENNIFER V. BERRYMAN** (a variance to reduce the required setback for a freestanding identification sign from 20' to 0' in a Planned Neighborhood Residential [R-3] zone on property located at 3050 Kirklevington Drive) with the conditions as set forth by the staff.

- c. **V-2011-64: SPEEDWAY SUPERAMERICA, LLC** - appeals for a variance to reduce the required perimeter setback from 50' to 20' along Nicholasville Road; and from 50' to 10' along the eastern property line in a Planned Shopping Center (B-6P) zone, located at 2490 Nicholasville Road. (Council District 4)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The overall design of the gas station/convenience store will be improved, which should benefit the general public on a very heavily commercialized segment of Nicholasville Road.
2. The relatively small size of this B-6P lot, and its isolation from the shopping center on the south side of Larkin Road, are special circumstances that contribute to justifying the requested variances.
3. Strict application of the 50' perimeter setback requirement of the Zoning Ordinance would likely prevent any substantial redevelopment of the property, which is unreasonably restrictive and a potential hardship for the appellant given some of the existing site conditions relating to traffic flow and circulation.
4. Given the location of this B-6P lot, and the history of setback reductions that have previously been granted by the Board, it is clear that the appellant is attempting to improve

how the property functions as a permitted business use, with no intent to circumvent any requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The reconstruction shall take place in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to demolition and construction.
3. The final design of the access points, traffic circulation and parking layout shall be subject to review and approval by the Division of Traffic Engineering.
4. All variances shall be noted on the amended development plan for the subject property as approved by the Planning Commission.
5. The relocated access point on Nicholasville Road shall be subject to the review and approval by the Kentucky Transportation Cabinet.
6. A 10' wide landscape buffer shall be maintained along the easterly property line, in conjunction with a 6' tall solid privacy fence or wall, with a minimum of one tree to be provided for every 30' of border.

Representation – Mr. Nick Nicholson, attorney, was present on the appellant's behalf. He indicated that they had read and understood the conditions for approval, including the requested 10-foot landscape buffer.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously to approve **V-2011-64: SPEEDWAY SUPERAMERICA, LLC** (a variance to reduce the required perimeter setback from 50' to 20' along Nicholasville Road; and from 50' to 10' along the eastern property line in a Planned Shopping Center [B-6P] zone located at 2490 Nicholasville Road) based on the staff's recommendation and subject to the six conditions.

- d. **V-2011-65: DR. RICHARD LOZANO** - appeals for a variance to increase the allowable projection of a covered porch into the required front yard from 8' to 10' in a Single-Family Residential (R-1C) zone, on property located at 157 Cherokee Park. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the subject or surrounding properties, as the 2-foot variance is only to allow a front porch to be constructed that will be in character with the residence and will be in character with other open porches along the street that also are less than 40 feet from the right-of-way.
2. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, as the setback required by the R-1C zone is 30 feet from the right-of-way, which is the same setback as the proposed porch.
3. The special circumstance that justifies the requested variance is the platted 40-foot building line for the Cherokee Park subdivision, which is 10 feet greater than the setback required by the existing zoning. If the setback along Cherokee Park were 30 feet from the right-of-way, the porch could be constructed without encroaching into the required front yard and a variance would not be needed.
4. Strict application of the Zoning Ordinance would require that a porch be constructed that would be somewhat out of scale with the existing residential structure and therefore would not match other existing porches along the streetscape of Cherokee Park.
5. The requested variance is not the result of a desire on the part of the appellant to circumvent the requirements of the Zoning Ordinance. It is merely the result of a desire to construct a useable outdoor space that is in character and in scale with the existing residence.

This recommendation of approval is made subject to the following conditions:

1. The porch shall be constructed in accordance with the submitted application, site plan and elevation drawings.
2. Any applicable permits shall be obtained from the Division of Building Inspection prior to construction of the porch.
3. Granting the requested variance is only for the purpose of allowing an increase in depth for the covered, but otherwise open, front porch.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. William Crawford was present on the appellant's behalf. He indicated that they had read and understood the conditions for approval.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried unanimously to approve **V-2011-65: DR. RICHARD LOZANO** (a variance to increase the allowable projection of a covered porch into the required front yard from 8' to 10' in a Single-Family Residential [R-1C] zone on property located at 157 Cherokee Park) as recommended by the staff and subject to the conditions as recommended by the staff.

- e. **V-2011-66: PHILLIP and JENNIFER DOBBS** - appeal for variances to reduce the required side yards from 25' to 10' for construction of two single-family residences on two adjoining lots in the Agricultural Rural (A-R) zone, located at 1218, 1224 and 1228 Centerville Lane. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. Granting such a variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed residences will be situated very close to the center of the property, and there are many residences on nonconforming lots in the Centerville Rural Settlement that have side yards of less than 25'.
2. Granting the requested variances will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as the lot is atypical for the Agricultural Rural (A-R) zone, and lots of this size typically do not have a side yard as large as 25'.
3. The narrow width of these lots in the Agricultural-Rural (A-R) zone is a unique and special circumstance that contributes to justifying the request.
4. Strict application of the Zoning Ordinance would limit the ability of the appellants to construct a reasonably sized home on the subject property without an unorthodox orientation on this lot, and would perhaps be contrary to the stated goal of the Rural Land Management Plan to stabilize and enhance housing in historic rural settlements of Fayette County.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan, with allowances to alter the driveway locations and house building plans within the approved setbacks.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The consolidation plat shall be certified prior to the issuance of any building permits.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Justin Drury, with 20/20 Land Surveying, was present on the appellant's behalf. He indicated that they had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously to approve **V-2011-66: PHILLIP and JENNIFER DOBBS** (variances to reduce the required side yards from 25' to 10' for construction of two single-family residences on two adjoining lots in the Agricultural Rural [A-R] zone located at 1218, 1224 and 1228 Centerville Lane) as recommended by the staff and subject to the three conditions outlined by the staff.

- f. **V-2011-67: BFD PROPERTIES, LLC** - appeals for a variance to reduce the required setback for a free standing identification sign from 10' to 4' in a Professional Office (P-1) zone, on property located at 2134 Nicholasville Road. (Council District 4)

The Staff Recommends: Approval, for the following reasons:

1. Granting such a variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The required sight triangle is not impeded by the location of the freestanding sign, and its location allows the bottom portion of the sign to be visible.
2. Granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, because the downward slope of the property away from the roadway creates a situation where the sign cannot be completely visible from the roadway if placed at the required setback. The only way to allow for full use of the freestanding signage permitted on the property is to reduce the sign setback, as proposed, or increase its height.
3. The steep slope of the landscape area between Nicholasville Road's right-of-way and the existing parking lot is a special circumstance that contributes to justifying this request to reduce the required setback.
4. Strict application of the Zoning Ordinance would limit the ability of the appellant to construct a sign that is completely visible, and not distracting to the motoring public along Nicholasville Road.

This recommendation of approval is made subject to the following conditions:

1. The sign may remain at a 4' setback in accordance with the submitted application and site plan.
2. An amended sign permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Ms. Elizabeth Pitchford, with Ruggles Sign Company, was present on the appellant's behalf. She indicated that they had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White, and carried unanimously to approve **V-2011-67: BFD PROPERTIES, LLC** (a variance to reduce the required setback for a freestanding identification sign from 10' to 4' in a Professional Office [P-1] zone on property located at 2134 Nicholasville Road) with the conditions as set forth by the staff.

- g. **CV-2011-57: JOHN C. REYNOLDS** - appeals for a conditional use permit to establish a bar in an existing building in a Neighborhood Business (B-1) zone; and a variance to reduce the required 100' setback from a residential zone to 70' along the western property line and to 50 feet along the southern property line, located at 231 Woodland Avenue. (Council District 3)

The Staff Recommends: Approval of the requested conditional use permit, for the following reasons:

1. A small bar at this neighborhood business location should not adversely affect the subject or surrounding properties. Seating will be limited to no more than 15 persons, and live music entertainment will not be provided. Adequate off-street parking is conveniently available to the rear of the building, and it is anticipated that on-street parking spaces will also be available during the evening and nighttime hours that the bar will be open.
2. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the requested variances, for the following reasons:

- a. Reductions in the residential zone setback should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Live music will not be provided, and the bar will occupy an existing building that is oriented toward Woodland Avenue, to the southeast, away from the R-3 zone behind the building and the R-2 zone on the opposite side of East Maxwell Street.
- b. The existing development pattern in this block of neighborhood businesses, and the configuration of the surrounding residential zoning, are special circumstances that contribute to justifying some reduction in the 100' setback requirement.
- c. Strict application of the Zoning Ordinance would effectively prevent a bar or nightclub from

occupying the existing building, as none of the property is at least 100' away from both of the nearby residential zones.

- d. The appellant is making a reasonable effort to adaptively re-use an existing building in the midst of several other neighborhood businesses. No expansion of the building is needed to accommodate the requested use, and there is no indication that an effort is being made to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The bar shall be established in accordance with the submitted application and site plan.
2. An occupancy permit, as well as any needed permits for remodeling, shall be obtained from the Division of Building Inspection prior to opening the bar.
3. Off-street parking shall be provided to the satisfaction of the Division of Building Inspection, either through shared parking or lease agreements, or documentation that a nonconforming parking situation is being continued but not expanded.

Chairman Stout asked whether there was opposition to the subject appeal present. There was no response.

Representation – Mr. John C. Reynolds, appellant, was present along with Ms. Kathy Bolton, All Star Realty. Both Mr. Reynolds and Ms. Bolton indicated that they had read, understood and agreed to abide by the conditions for approval.

Mr. Stumbo acknowledged that letters of opposition to this appeal had been received, which were reviewed by the Board. Chairman Stout noted, in particular, the letter from Ms. Mary Jane Nuckols who voiced concern about noise, litter and the lack of adequate parking.

Discussion - Mr. Stumbo asked Traffic Engineering to comment about the parking issue that was raised by the concerned neighbor. Mr. Gallimore responded that he did not review the parking in this instance because he took it to be existing parking. He said he had no opinion one way or the other about the parking, without looking at it, and could not offer any additional information.

Mr. Marx stated that Condition #3 would address that issue to some extent.

Chairman Stout asked if the appellant had any contact with the neighborhood association. Mr. Reynolds responded no. The Chairman then asked staff for comment about the complaints expressed in the letters (i.e., litter, noise, etc.). Mr. Marx said he thought it would depend on the operator of the business and how responsible they are. Chairman Stout wanted the applicant to have an opportunity to review the letters in question.

Ms. Moore asked if there was any relationship between The 6 Friends Café and the John C. Reynolds case currently under consideration. Mr. Marx responded that both establishments are located in the same neighborhood, about a block apart; but there was no relationship between the two. Ms. Deidre Cain, owner of The 6 Friends Café, stated that she had no objection to Mr. Reynolds' proposal.

After reviewing the letters, Mr. Reynolds said, in response to the Chairman, that live music/entertainment would not be offered at the bar, which is small and will have seating for up to 15 people.

Ms. Meyer asked about Mr. Reynolds' previous business experience, to which he responded that he was a bar manager for 4 years in New York.

Ms. Moore inquired whether the letters of objection were from residents whose property abuts the subject property. Mr. Marx said he thought one of the letters may have been from a nearby resident. Ms. Cain responded that she would be able to provide some information to that point. She stated that Ms. Nuckols, one of the objectors, operates a business next door to her establishment; but she does not live on the premises.

Mr. Griggs asked if there would be an increase in seating capacity for the proposed bar, considering the new applicant; and whether there were any complaints about noise, trash or

adverse effects from the previous use. Mr. Hume responded that he was not familiar with the history of the building; and that they had no record of any complaints about it. He said he doubted that the seating capacity would be increased since the building would not be enlarged. Mr. Griggs then asked Mr. Reynolds if they anticipated having more than 15 seats, to which he responded no.

Ms. Meyer inquired whether it was typical for a bar to be open until 2:30 a.m. Ms. Boland responded that basically, the allowable hours in terms of any bar situation in Fayette County is governed by ABC laws, as well as local ordinances; and that 2:30 a.m. is a standard time for most bars to close.

Action – A motion was made by Mr. Glover, and seconded by Ms. White to approve **CV-2011-57: JOHN C. REYNOLDS** (a conditional use permit to establish a bar in an existing building in a Neighborhood Business [B-1] zone; and a variance to reduce the required 100' setback from a residential zone to 70' along the western property line and to 50 feet along the southern property line, located at 231 Woodland Avenue) based on the staff's recommendation and subject to the three conditions.

The votes were as follows:

Ayes: Glover, Griggs, Meyer, Stumbo, White, Stout

Nay: Moore

The motion for approval carried, 6 to 1.

- h. **C-2011-56: MASJID BILAL** - appeals for a conditional use permit to expand an existing worship center in an Agricultural Urban (A-U) zone, on property located at 1545 Russell Cave Road. (Council District 2)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Landscape buffers of between 6' and 8' in width will be provided along the full property perimeter, with some existing trees to be preserved in those areas. Storm water management will be handled through the use of permeable pavers, underground detention, and, if necessary, some above ground detention at the rear of the lot.
2. All necessary public services and facilities are available and adequate for the requested conditional use.

This recommendation of approval is made subject to the following conditions:

1. The mosque shall be established in accordance with the submitted application, and an amended site plan indicating: (a) an 8' or wider landscape buffer along the northern property line and rear property line, with existing evergreens and other trees in those buffer areas to be preserved; and (b) a 6' or wider landscape buffer along the southern property line, with existing trees in that buffer area to be preserved. Site plan amendments needed in order to comply with the requirements of the Division of Engineering (with regard to storm water management) and Division of Traffic Engineering (with regard to layout of the parking areas and access/circulation) are acceptable. Should some above ground detention of storm water be required, it is recognized that some parking spaces will be lost, resulting in less than 177 off-street parking spaces to be provided.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and occupancy of the new building.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. The final design of the parking areas and traffic aisles shall be subject to review and approval by the Division of Traffic Engineering.
5. The new entry and exit access points at Russell Cave Road shall be subject to approval

- by the Kentucky Transportation Cabinet.
6. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
 7. Any outdoor pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and oriented downward to avoid disturbing adjoining residential properties.
 8. All existing trees along the rear and both sides of the property, as noted on the amended site plan, shall be preserved and maintained.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Chris McCoy, architect, was present on the appellant's behalf. He indicated that they had read, understood and agreed to abide by the conditions for approval. He referred to the revised site plan showing the changes that were made to address the staff's review comments. Mr. McCoy offered to highlight the key changes after submitting the revised plan to the Board for review.

Mr. Griggs asked if the staff had seen the plan revisions and accepted them. Mr. Marx responded that these revisions are intended to address the items in Condition #1, most of which had been accomplished. He said the only remaining item dealt with the possibility that the applicant would need to retain the detention basin to the rear of the lot, which would result in the loss of some parking spaces. Mr. Marx stated that the revised plan more clearly shows that the minimum off-street parking requirements will be met in the event that the rear basin is retained. He said the Board, if they are inclined, would need to approve this in a way that gives some flexibility so that if the applicant is able to do underground detention, use permeable pavers and delete the rear basin entirely, then the parking will go back to the number of spaces originally proposed, which exceeds 170 spaces.

Mr. Glover asked about the changes in the revised site plan that differed from the previous submittal. Mr. McCoy said one of the changes was that they reduced the width of the new entrance drive to a single lane (instead of the two) which, in turn, will reduce the amount of asphalt pavement and increase the amount of landscape buffering on the sides, and green space on the property. He explained that this was done in response to one of the staff's initial comments about paving a significant portion of the property and producing water runoff. He said they have been working with staff to reduce the water runoff and improve the traffic flow in the parking area while reducing the amount of asphalt. He said although they would certainly meet the stormwater management requirements and the parking requirements, the question was what they could afford to do, which was the reason the Board was seeing two different versions of the parking lot in the back -- the grass detention basin versus underground detention or pervious pavement.

Mr. McCoy stated that another small difference between the site plans was that the side yards have increased in green space, so they can preserve the existing evergreen trees that run along the north edge of the property. He noted that another advantage to the revised plan and the reduced pavement is that it increases the landscape buffer in the front of the property, which is good due to the grade change.

The Chairman asked whether the staff or the Board had any further questions regarding this project.

Mr. Griggs asked whether the conditions, particularly Condition #1, as written, are adequate to allow some flexibility between the two plans (i.e., underground detention basin versus permeable pavers). Mr. Marx said he thought the flexibility was in there already; but a large part depends on whether Mr. Hume was comfortable with the understanding that the applicant could go either route as the condition is currently set up.

Mr. Hume stated that if the Planning staff was comfortable with the permeable pavers being an allowable parking surface, then Building Inspection was fine with it.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously to approve **C-2011-56: MASJID BILAL** (a conditional use permit to expand an existing worship center in an Agricultural Urban [A-U] zone on property located at 1545 Russell Cave Road) based on the staff's recommendation and subject to the eight conditions.

- i. **AV-2011-59: DAVID S. KIRN** - appeals for an administrative review to allow a directional sign of 17 square feet; and a variance to increase the allowable height from 3' to 5'8" in a Professional Office (P-1) zone, on property located at 2376 Alexandria Drive. (Council District 10)

The Staff Recommends: Approval of an administrative appeal to transfer 11 sq. ft. of unused signage, for the following reasons:

1. The one allowable free-standing business sign for the subject property is to be eight square feet smaller than the 40 sq. ft. maximum allowed by Article 17-7(e)(1) of the Zoning Ordinance.
2. Two three square-foot directional signs are allowable for the subject property under Article 17-7(e)(4) of the Zoning Ordinance, but only one such sign is being proposed.
3. These transfers would not result in any circumvention of the Zoning Ordinance requirements or limits.

The Staff Recommends: Approval of a variance increasing the height of this sign from 3' to 4' 8", for the following reasons:

- a. Granting such a variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The required sight triangle will be provided if the sign is erected at the location and height proposed, and it will be set back ten feet from the right-of-way of Alexandria Drive.
- b. Granting this height variance would not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as the subject lot has extensive street frontage along two streets; and other signs of similar stature, orientation and location exist along this portion of Alexandria Drive. Therefore, no change to the character of the area will be experienced.
- c. The shape of the subject lot and the location of its only access point so far to the north of the building on the lot are special circumstances, unlike other property in this area or in this zone, which both contribute significantly to justifying this dimensional variance request.
- d. Strict application of the Zoning Ordinance would limit the ability of the appellant to construct a sign along the Alexandria Drive frontage to direct visitors to the subject property in a manner that clearly differentiates it from the nearby entrance to the Kentucky Clinic South.
- e. The variance is not a direct result of the actions of the appellant, but is more of a necessity due to the two adjacent medical facilities, which have nearby entrances off of Alexandria Drive.

This recommendation of approval is made subject to the following conditions:

1. The sign shall be located on the subject property in accordance with the submitted application and site plan, noting the reduced height and size of the directional sign requested.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to erecting this directional sign.
3. The one free-standing sign on the property shall be limited to a maximum of 32 square feet in size.
4. No other directional signs shall be erected on the subject site.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. David S. Kirn, appellant, was present. He indicated that he had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Mr. Stumbo, seconded by Ms. White, and carried unanimously

to approve **AV-2011-59: DAVID S. KIRN** (an administrative review to allow a directional sign of 17 square feet; and a variance to increase the allowable height from 3' to 5'8" in a Professional Office [P-1] zone on property located at 2376 Alexandria Drive) with the conditions as set forth by the staff.

- j. **A-2011-60: UPS** - appeals for an administrative review to allow a temporary graveled parking lot for trailers in a Light Industrial (I-1) zone, on property located at 1702/1800 Mercer Road. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

1. Granting the appellant's administrative appeal should not adversely affect the subject or surrounding properties, nor should it provide a negative zoning precedent. The site will provide vehicular parking for 90 days in the short term, but will also be part of a 12-month construction project involving gravel.
2. As proof that this can be considered a construction project site, the appellant's consultant (TetraTech), has already prepared a Stormwater Pollution Prevention Plan (SWPPP) and an Erosion and Sediment Control (ESC) Plan for this gravel parking area. Use of a geotextile filter fabric and stone sub-base are also proposed for this 3-acre site.
3. Under those plans, Article 16-2(f) of the Zoning Ordinance will be met, since dust "will be controlled by water sprayed from a tanker truck as needed during dry weather" for this temporary parking area.
4. All necessary public facilities and services are otherwise available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The property shall be used in accordance with the submitted application and site plan, including the submitted Stormwater Pollution Prevention Plan (SWPPP) and Erosion and Sediment Control (ESC) Plan for this gravel parking area.
2. The 3-acre subject site shall be authorized for vehicular parking from October 15 through January 15, 2012, and discontinued for such use thereafter, so long as this 3-acre site remains graveled.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Gary Willis, the local UPS Facility Manager, was present. He indicated that he had read, understood and agreed to abide by the conditions for approval.

Mr. Stumbo inquired whether the gravel lot eventually would be paved. Mr. Willis responded affirmatively. He said the project to develop a permanent staging site at the facility was underway; and they are working on the layout right now.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore, and carried unanimously to approve **A-2011-60: UPS** (an administrative review to allow a temporary graveled parking lot for trailers in a Light Industrial [I-1] zone on property located at 1702/1800 Mercer Road) as recommended by staff and subject to the two conditions.

- k. **A-2011-61: SIS, LLC** - appeals for an administrative review to allow business signage on a brick wall that is larger than 40 square feet in a Downtown Business (B-2) zone, on property located at 165 Barr Street. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

1. Granting this appeal will not adversely affect the subject or surrounding properties, nor provide any negative zoning precedent. The sign will comply with the provisions of Article 17 of the Zoning Ordinance, in that at 14.1 square feet in area, it will be well under the 40 square feet allowable for monument signs in the Downtown Business (B-2) zone.
2. The wall to which the sign is to be affixed is necessary to properly screen an electric transformer, located only 12' from each right-of-way. As such, the sign will complement a wall otherwise erected to enhance public safety.

This recommendation of approval is made subject to the following condition:

1. The sign shall be erected in accordance with the application and site plan submitted with this appeal.

Chairman Stout asked whether there were objectors to the subject appeal present. There was no response.

Representation – Ms. Karen Smallwood was present on the appellant's behalf. She indicated that she had read, understood and agreed to abide by the condition for approval.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs and carried unanimously to approve **A-2011-61: SIS, LLC** (an administrative review to allow business signage on a brick wall that is larger than 40 square feet in a Downtown Business [B-2] zone on property located at 165 Barr Street) for the reasons listed by the staff and subject to the single condition.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2011-27: JOHNNY TEMPLE** - appeals for a variance to increase the allowable square footage and height for three directional signs, as well as allow a greater amount of text for the signs in a Professional Office (P-1) zone, on property located at 101 Yorkshire Boulevard. (Council District 7)

The Staff Recommends: Disapproval, for the following reasons:

- a. All three of the directional signs that are the subject of this appeal are larger than three square feet, which is the maximum size allowed by Article 17-7(e)(4) of the Zoning Ordinance. Since no request has been made to transfer unused sign square footage to these signs (via an Administrative Appeal), there is no assurance that the total permitted sign area for the subject property will not be exceeded, which would be contrary to the restrictive provisions of Article 17-8(a) of the Zoning Ordinance.
- b. Detailed justification for the requested height increases has not been supplied by the appellant, which is considered a significant shortcoming because two of the three directional signs proposed are to be taller than existing directional signs that have served this property for a number of years.
- c. Two of the three signs at issue have non-directional text and logos that exceed the 25% limit as specified by Article 17-3(b)(6) of the Zoning Ordinance.

Representation – There was no representation present when this case was initially called.

(Following disposition of CV-2011-55: THE 6 FRIENDS CAFÉ, the Board returned to the aforementioned appeal.)

Responding to the Chairman, Mr. Marx said, in light of the applicant's failure to amend the current application to include an administrative appeal, and since there had been no contact with staff during the interim, he recommended disapproval.

Action – A motion was made by Mr. Glover, seconded by Ms. Moore and carried unanimously to disapprove **V-2011-27: JOHNNY TEMPLE** based on the staff's recommendation.

D. **Conditional Use Appeals**

1. **CV-2011-55: THE 6 FRIENDS CAFÉ** - appeals for a conditional use permit to offer live music; and a variance to reduce the required 100' distance from a residential zone to 60' in a Neighborhood Business (B-1) zone, on property located at 191 Kentucky Avenue. (Council District 3)

The Staff Recommends: Approval of the requested conditional use permit, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Live music will be limited to individual or duo acoustic performers, and will only be provided on Fridays and Saturdays from 8:00 PM until 10:30 PM.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the requested variance, for the following reasons:

- a. A reduction in the 100' residential zone setback should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The needed setback reduction applies primarily to the R-3 zone on the opposite side of Kentucky Avenue, which is developed as Woodland Park.
- b. The configuration of the R-3 zone boundary in the immediate vicinity of the subject property is a special circumstance that contributes to justifying a setback reduction.
- c. Strict application of the Zoning Ordinance would prevent the appellant from offering any type of live music in the outdoor patio or in any part of the existing building, which is unreasonably restrictive since there are no actual residential uses in the closest portions of the surrounding R-3 zone.
- d. The appellant is attempting to maintain a viable business use in a neighborhood-friendly manner. No building expansions are proposed, and the limited hours and low intensity of music to be provided support that there is no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. Live music shall be provided in accordance with the submitted application and site plan, limited to individual or duo acoustic performers on Fridays and Saturdays, from 8:00 PM until 10:30 PM.
2. The entertainment area shall be confined to the southwest corner of the existing building and porch.
3. The appellant shall coordinate with the Division of Parks & Recreation to ensure that live music does not interfere with musical or dramatic events taking place in Woodland Park.
4. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days of action of the Board.

Representation – Ms. Deidre Cain, appellant, was present.

Since there were objectors to this appeal present, Chairman Stout asked to hear their comments first.

Opposition – Mr. Lionel Hawse, 169 Kentucky Avenue, was present representing 20 neighbors, as well as the Aylesford Place Neighborhood Association, who expressed via letters to the Board their objections to the requested conditional use to offer live music at the 6 Friends Café. He stated that a conditional use permitting live music to be played in a B-1 zone requires: 1) soundproofing; 2) a 100-foot setback from any residential zone; and 3) adequate parking.

Mr. Hawse first spoke about the required 100-foot distance from a residential zone, noting that the property at 181 Kentucky Avenue, zoned R-3, and the property at 185 Kentucky Avenue, zoned B-1 but is a 4-unit apartment, are less than 100 feet from the subject property. He stated that offering live entertainment outside, on an open porch/patio, was not contemplated by Article 8-16(d)(5), which requires soundproofing; and it is undesirable and creates a noise disturbance across a dwelling unit boundary. In point, he said that the applicant, without the Board's approval, offered live music earlier in

the year and received complaints from the neighbors at 185 Kentucky Avenue.

Secondly, Mr. Hawse spoke about the parking requirement for a restaurant offering live music, which is based on the number of seats. He stated that according to the staff report, there is seating to accommodate 16 people inside the establishment; and the outdoor space has seating for 16 people, which he observed from the number of tables and chairs there. It was noted that 8 parking spaces would be required, based on those numbers. Mr. Hawse went on to say that according to the Traffic Engineering guidelines, the parking spaces have to be a minimum of 9.5 feet, and 13 feet for handicapped spaces. He said in order to accommodate the required parking for this restaurant, the width of the lot would have to be 79.5 feet; however, the existing lot is only 37.5 feet wide, as shown on the site plan. With regard to the staff's suggestion to stack the parking, he argued that the lot lacked the necessary depth to do that; and therefore, the parking area would only be able to accommodate half of the required parking needed for this use. Also of note was that the entrance to the parking area for the restaurant is from High Street; the lot is unmarked; and there is no direct access from the small parking lot in back to the restaurant. Because of noncompliance with the conditions for a restaurant serving alcohol and playing live music, he said his neighbors and the neighborhood association strongly objected to this request, which the Board was asked to deny.

Chairman Stout asked whether Ms. Cain was aware of the numerous letters in opposition to this case. Ms. Cain responded that she was not; but she wished to submit letters and a petition of support signed by 200 people that live and work in the neighborhood. Chairman Stout then asked if Ms. Cain had met with the neighborhood association regarding this request. Ms. Cain responded no; but noted that she had met with the business owners in the surrounding Woodland Triangle. She said she did not know they were considered part of the Aylesford Neighborhood Association.

Appellant's Presentation – Ms. Cain stated that she had been working with the Planning and Zoning and Building Inspection staff and was compliant with the parking regulations as it relates to the seating. She said they only have a beer license and do not serve liquor. The café is open until 11:00 p.m. and the music stops at 10:30 p.m. Regarding access from the parking area, she said there is a sidewalk located between their building and the building next door that leads from the parking area to the front of the building; and it is wide enough for wheelchair access.

Ms. Cain stated that she operates a small, independently owned café; and they are a member of the Woodland Triangle Business Association, consisting of 20 shops and small restaurants. She said Mr. Hawse was correct, that live music was offered from May 2010, when the café opened, until about two months ago, when Building Inspection informed her of the complaints and requested that the music venue be discontinued until a (conditional use) permit was obtained. She said the acoustic music previously offered was performed by solo artists or duos; and if there were any objections to it, no one complained directly to her. Otherwise, she would have tried her best to work something out with the neighbor(s) to address the problem.

Regarding the issue of the required distance from a residential zone, Ms. Cain stated that the subject property is more than 100 feet from the nearest B-1 zoned property to the north, in compliance with the law; and it is bounded to the east by Woodland Christian Church, which is at least 100 feet away. To the west, she said they are 100 feet from any residential zone and 60 feet from Woodland Park, which is zoned R-3 and will never be developed as such. She argued that the front porch of the establishment is not within 100 feet of any residence. With respect to the noise issue, Ms. Cain said she would be willing to move the music venue inside, although it was her belief that the issue wasn't really about the music (given an earlier comment to her from Mr. Hawse). In point, Ms. Cain said there is music played in Woodland Park in conjunction with City-sponsored events such as concerts and programs like Ballet Under the Stars, which she supports. She said the site for the café was chosen because of the sense of community; and if the requests for a conditional use and variance are not granted, it will be a hardship to keep a struggling business open in a very difficult economic time. In closing, she respectfully asked for the Board's favorable consideration.

Board Questions – Mr. Stumbo asked for clarification regarding the statement that was made that the live music offering was not in compliance with the Zoning Ordinance. Mr. Marx referred to an aerial photo of the subject and surrounding properties in order to explain the 100-foot setback requirement. He pointed out the location of the 6 Friends Café, Woodland Park and Kentucky Avenue in relation to the residential zone line boundary between R-3 and B-1. Regarding the setback requirement, he said

the distance is measured from the use itself, rather than the property boundary, which in this case is where the live music is provided. As such, he said the use complies with the 100-foot setback from any residential zone, with the exception of Woodland Park (zoned R-3) where the variance is needed, which is approximately 60 feet away, on the opposite side of Kentucky Avenue. Therefore, in the staff's opinion, there were no issues with regard to potentially impacting residential uses.

In response to Mr. Hawse's comment regarding how the 100-foot distance is measured from the property line, Mr. Marx reiterated that, instead, it is measured from where the use is located, which in this case is the area where the live music is offered.

Mr. Stumbo asked Mr. Gallimore whether there was adequate parking for the café, including handicapped spaces, considering an earlier comment to the contrary. Mr. Gallimore said this was somewhat similar to the previous case Mr. Stumbo asked about, in that the parking lot was not reviewed because it already existed, unlike the review that would be given to a new development.

Mr. Stumbo then asked Mr. Hume to comment about the complaints that Building Inspection had received from the neighbors. Mr. Hume said they had been receiving complaints for months, primarily about noise; and that the last complaint was in early June, at which time an inspector was dispatched. He said the inspector discussed the problem with Ms. Cain and she agreed to stop offering live music until she received the Board's approval; however, it continued until he finally wrote a criminal complaint threatening court action. He said Ms. Cain subsequently came in to get an application, but it was another two months before she filed the request and got on the docket. He noted some difficulty with getting the appellant to this point. Mr. Hume went on to say that the complaints were related to noise (from the music) and foot traffic (patrons leaving the café). He noted that the police would come by the café at times when entertainment was offered, but the noise ordinance was not enforced; and that a complainant withdrew her complaint about two months ago in fear of retaliation.

Responding to the Chairman's inquiry about the source of the retaliation, Mr. Hume said he assumed it came from patrons of the café.

In response, Ms. Cain stated that she was only aware of one anonymous person's complaint after speaking with Mr. Hume several times; and that she didn't know the identity of the person until three days ago, when one of the objector's tenants and fellow business owners informed her. She said she didn't know why this person was fearful about any retaliation. Ms. Cain went on to respond to not stopping the live music, saying she was told to proceed by Mr. Hume until such time as she was advised that he could no longer protect her. She noted that Mr. Hume and friends were at the café on the last night that live music was offered there. Ms. Cain said she understood there were complaints and issues, but she felt they could be worked out. She argued that you could walk five or six properties down from the café and be unable to hear the music; and that during the winter months, there were no complaints since the music was played only indoors.

Mr. Griggs commented about the numerous letters of opposition that the Board received regarding this case. In response, Ms. Cain reiterated that she was only aware of one person's opposition via the complaint. He asked about an earlier statement made by Ms. Cain that the objections to this were not really about the music. Ms. Cain responded that, for some of the neighbors, it was about wanting to keep the neighborhood strictly residential; but on the other hand, she believed that some of the complaints were directed to particular patrons at the café. In point, she reiterated that the live music they played was not as loud as the blaring music heard at a nearby skate shop on Sunday and the skate board park. Ms. Cain said the music at the café was stopped at 10:30 in the evening in order not to disturb the neighbors; and if it did, she apologized for it. However, she said if other people she had spoken with couldn't hear the music, she had to believe the complaints were related to something other than that.

The Chairman recognized Mr. Hume. He said if the Board felt so inclined, there have been similar cases heard before that had objectors, and the Board allowed a 6-month trial run to see if they are complying with the conditions. He said a review of the use at that time would determine whether or not there is cause for a revocation hearing. Mr. Hume added that they could monitor police activity, the times of the entertainment and complaints as well, if the Board wished. However, he reiterated that it was difficult to get Ms. Cain to this point, which she agreed with, providing an explanation for that situation.

Mr. Griggs asked whether Ms. Cain would be willing to move the music venue inside. Ms. Cain said if that was the Board's decision, she would certainly comply. She said she would prefer trying to have the music outside during the summer months from 8:00 to 10:00 p.m. on Friday and Saturday; but if the Board were to make the decision that the music strictly had to be inside, she would comply.

Chairman Stout commented that, as a small business owner, he didn't want to see Ms. Cain put in the position where she would no longer be in business; but he felt there needed to be a compromise on her part, especially when dealing with the neighborhood. He said the live music seems to be an issue; and if a compromise could be reached where it would not be offered outside, with no more than two acoustic performers, he would support that. Ms. Cain said she was willing to consider a compromise, which would allow her to stay in business.

Chairman Stout asked if Mr. Hawse, the neighbors and business owners would be amenable to the music being offered indoors rather than on the porch. Mr. Hawse responded that he could not speak for the neighborhood association or the other neighbors, but if the music was moved inside and it was not disturbing the neighbors, he didn't think there would be much objection to that. Chairman Stout said it seemed that there was a failure in communication and he wanted to recommend a continuance of this case for 30 days. Ms. Cain responded that she probably would not be in business in 30 days, given the difficult economy; and that she did not believe the failure to communicate was on her, because she was only aware of one complaint and the person's identity was unknown.

Mr. Hawse brought up an issue related to the ownership of the sidewalk and fence, which the Chairman discouraged due to its personal nature.

Mr. Sean Burns, a local business owner and board member of a non-profit, was present and spoke. He offered to mediate between Ms. Cain and the neighborhood association, to eliminate any personal conflicts. He also offered to videotape the actual occurrence over the next six months, if the trial run is granted, and communicate with Mr. Hume. He said he would be more than happy to be involved.

For clarification, Ms. Moore asked if the variance was needed because this (use) is located across from Woodland Park; and whether the conditional use for live music would still be necessary regardless. Mr. Marx responded that was correct.

Ms. Kay Garner, a long-time Lexington resident, was present to express her strong support for the café and the live acoustic music provided by local artists there. She also expressed her surprise at the turn this case had taken. Ms. Garner said the type of food offered at the café isn't available at other places; and that she personally enjoyed having the music venue outdoors. With regard to the noise issue, she commented about an occasion when music was being offered at the café which was barely audible to her from across the street, at Woodland Park. Ms. Garner also mentioned that she didn't experience any problems with the sidewalk access from the parking lot to the building when she used a walker because of a medical issue.

Ms. Alexis Moraitakis was also present to speak in support. She said that Ms. Cain has put a lot of hard work and energy into the café, just as she did for the community and the local artists she supports. Ms. Moraitakis felt that if the appeal was denied and the music venue ceased, it would be a travesty for all concerned.

The Chairman asked for comment from the staff. Mr. Marx spoke about the dilemma of either restricting the venue indoors or allowing it to continue outside. He suggested that one possibility, if the Board was so inclined, would be to end the music a little earlier if it is continued outdoors.

Mr. Hume stated that they would re-evaluate the building for indoor occupancy, if Ms. Cain moved the venue indoors; and that they would have no objection to a 6 or 9-month review in order to evaluate how this is going.

Ms. Meyer commented that she has patronized the 6 Friends Café and would love to be able to walk there if she lived in the neighborhood. However, she also understood that she does not live there. In the spirit of compromise, Ms. Meyer wanted to see the music moved inside; but if the Board were to consider having it outside, she felt a shorter duration, like during July and August and ending the venue

at an earlier time, would be acceptable.

Ms. Moore commented that she found this (case) very troubling. She said generally, she would be opposed to granting the variance because of the 100-foot requirement; but since this involves Woodland Park, she saw no reason not to grant the requested variance. As to the conditional use, she thought it made sense to move the music inside; and if it turns out that this is just a personal problem that can be worked out, it was always possible later to ask for an amended conditional use and move the music back outside. Ms. Moore said she also liked the idea of a 6 or 9-month review.

Since there were no further questions or comments, the Chairman asked for a motion.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously to approve **CV-2011-55: THE 6 FRIENDS CAFÉ** (a conditional use permit to offer live music; and a variance to reduce the required 100' distance from a residential zone to 60' in a Neighborhood Business [B-1] zone on property located at 191 Kentucky Avenue) subject to the four listed conditions, including the following modification of Condition #2: The entertainment area shall be confined to the southwest corner of the existing building and indoors only; and the addition of Condition #5: The Board shall provide a review of this use 6 months from the date of approval.

Mr. Griggs also recommended that the applicant build a good rapport with the neighbors on Kentucky Avenue. He said when the neighbors are seeing this in the way the applicant does, she should come back and talk about outdoor music on the porch, without a large stack of letters in opposition that is impossible to ignore.

Chairman Stout concurred with Mr. Griggs' point and thanked everyone for coming to express their concerns and their support.

(Following disposition of the aforementioned case, the Board returned to V-2011-27: JOHNNY TEMPLE.)

E. **Administrative Review**

None Remaining

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time.

Chairman Stout acknowledged that Ms. Moore was recently reappointed to the Board of Adjustment for another 4-year term. He asked that Ms. Moore also be reappointed as Vice-Chair.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously to accept the appointment of Ms. Moore as Vice-Chair.

V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time. There were none.

VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be October 28, 2011.

VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 2:40 p.m.

Louis Stout, Chairman

James Griggs, Secretary

